FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

2015 OCT -9 P 4: 47

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

CHRISTIAN GARCIA,
Plaintiff,

v.

Gregory Holden and Douglas Serven, Police Officers with the Alexandria Police Department, sued in their individual capacity,

Defendants.

COMPLAINT

Civil Action No. 1:15-cv-1324 (LO/IDD)

SUMMARY

1. This is an action brought by Christian Garcia arising out of events that occurred on the evening of October 19, 2013. The above officers encountered Garcia on the street and defendant Moore attempted to detain Garcia without probable cause. Garcia attempted to leave and after a brief foot pursuit Holden shocked Garcia four times with taser prongs, beat Garcia and defendant Serven punched Garcia in the eye with his fist. As is customary in cases where the police use excessive force, they charged Garcia with crimes.[1] Garcia was acquitted of all charges at trial.

2. As a direct result of their conduct, Garcia suffered severe injury to his face, abrasions all over his body, puncture wounds, vomiting and was hospitalized. Garcia seeks redress for the injury to his person and to his rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and the laws of the Commonwealth of Virginia.

JURISDICTION

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[1] *See, e.g.*, http://wamu.org/projects/assault-on-justice/ (describing how the charge of "assault on a police officer" is used as a strategy to cover up police abuse and coerce pleas).

3. This action arises under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and is filed pursuant to 42 U.S.C. § 1983. The jurisdiction of this Court is predicated on 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights violations). The Court also has pendent jurisdiction over the state claims under 28 U.S.C. § 1367.

PARTIES

4. Plaintiff Christian Garcia is a citizen of the Commonwealth of Virginia, and currently resides at 4515 W. Braddock Road, Alexandria, Virginia 22304.

5. Defendant Gregory Holden is a police officer in the City of Alexandria, VA. At all times mentioned in this Complaint, Defendant Holden was a police officer in the City of Alexandria, VA and was acting under the color of state law.

6. Defendant Douglas Serven is a police officer in the City of Alexandria, VA. At all times mentioned in this Complaint, Defendant Serven was a police officer in the City of Alexandria, VA and was acting under the color of state law.

7. Each Defendant is sued in his individual capacity.

STATEMENT OF FACTS

8. On October 19, 2013, shortly before 10:00 p.m., Officers Gregory Holden and Tony Moore of the City of Alexandria, Virginia, Police Department observed Christian Garcia on Holmes Run Parkway in the City of Alexandria.

9. Garcia was standing near a parked car. Garcia began to walk away from the car, in the direction of the officers. The officers made contact with Garcia when he passed them, asking whether the parked vehicle belonged to him, to which Garcia responded "no, I'm walking home." At that point, Officer Holden walked toward the car whereupon he claims smelled the odor of burnt marijuana. He called out to Officer Moore to detain Garcia based on the odor of

marijuana.

10. Garcia complied with the unlawful order, returning to the vehicle and placing his hands on the trunk. Shortly after doing so Garcia departed from the scene, traveling in the direction of the Holmes Run Trail. Holden pursued Garcia instead of Moore because "[Holden] had a taser."

11. As Holden followed Garcia through the park, he yelled at him to stop because "he was under arrest." Holden had no reason believe Garcia had committed a crime at this point, including possession of marijuana. Instead, Holden alleged that during the chase he developed probable cause to believe flight resulted in a trespass on the park, since it was after dark.

12. Officer Holden was familiar with this area and the park, and knew that the park did not close at dark. Officer Holden knew that the park closed at 10 p.m. as the numerous signs posted around the park stated.

13. Shortly after entering a wooded area in the park, defendant Holden shot Garcia with his taser for the first time. Garcia fell down, but then got up and continued to run. Defendant Holden shot Garcia with the taser a second time, causing Garcia to fall down again.

14. At this point, Holden claimed that Garcia held out his wallet to the officer instead of complying with Holden's commands to roll onto his stomach. Holden was close enough at this point and had sufficient time to physically restrain Garcia, but chose not to restrain him.

15. Garcia began running again. Holden shot Garcia with his taser two more times before finally deciding to physically restrain Garcia rather than shock him with more taser prongs.

16. While placing Garcia in handcuffs, the officers further abused Garcia. Defendant Serven arrived and punched Garcia in the face before drawing his gun and telling Garcia "if you move I'll shoot."

17. It was quickly evident that Garcia was in distress and needed medical treatment. Prior to

being transported to the hospital, however, officers made demeaning comments to Garcia, for example stating "I told you to stop bleeding in my car," and demonstrating an appalling indifference to the needless harm they inflicted on him.

18. Garcia was eventually transported to Inova Alexandria Hospital, where medical personnel confirmed an injury to Garcia's neck, shortness of breath, vomiting and abdominal pain, and observed "extensive" abrasions all over his body, including an abrasion over his left eye consistent with being punched, as well as puncture wounds from the taser prongs. He was administered several medications, including morphine for pain and Zofran for uncontrolled vomiting, in addition to CT scans of his head and spine. Garcia remained in the hospital overnight. The abrasion over his left eye eventually became a black eye.

19. Garcia was falsely charged with trespassing in a city park after dark (Alexandria City Code 6-1-1), possession of marijuana (Va. Code § 250.1) and resisting arrest (Va. Code § 479.1). Garcia was acquitted of all charges.

CAUSES OF ACTION 1-4

FIRST CAUSE OF ACTION
Civil Rights Violation (Excessive Force – Fourth and Fourteenth Amendments - Defendants Holden and Serven)

18. Garcia repeats and re-alleges paragraphs 1 through 19 of this Complaint as if fully set forth herein.

19. Holden's and Serven's actions were not objectively reasonable in light of the facts and circumstances confronting them.

20. As a direct and proximate result of the actions of Holden and Serven acting unreasonably under color of law, Garcia was deprived of rights protected by the Fourth and Fourteenth Amendments to the United States Constitution.

SECOND CAUSE OF ACTION
Civil Rights Violation (substantive due process right to physical integrity– Fourteenth Amendment - Defendants Holden and Serven)

21. Garcia repeats and re-alleges paragraphs 1 through 19 of this Complaint as if fully set forth herein.

22. Holden's and Serven's actions violated Garcia's fourteenth amendment substantive due process right to physical integrity by beating him.

23. As a direct and proximate result of the actions of Holden and Serven acting unreasonably under color of law, Garcia was deprived of rights protected by the Fourteenth Amendments to the United States Constitution.

THIRD CAUSE OF ACTION
Assault and Battery (State Claim - Defendants Holden and Serven)

24. Garcia repeats and re-alleges paragraphs 1 through 19 of this Complaint as if fully set forth herein.

25. The conduct of Holden and Serven as set forth herein constitutes assault and battery in violation of the law of the Commonwealth of Virginia.

26. The assault and battery was the proximate cause of serious injuries sustained by Garcia, and Holden's and Serven's actions were willful, reckless, wanton and intentional.

FOURTH CAUSE OF ACTION
Gross Negligence (State Claim - Defendants Holden and Serven)

27. Garcia repeats and re-alleges paragraphs 1 through 19 of this Complaint as if fully set forth herein.

28. The conduct of Holden and Serven as set forth herein constituted gross negligence; their conduct causing serious injuries sustained by Garcia and the conduct of Holden and Serven was willful, reckless, wanton and intentional.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this court enter judgment:

WHEREFORE, Garcia seeks against the defendants, severally and jointly, where appropriate, the following relief:

A. Reasonable compensatory damages to be determined by a jury;

B. Reasonable punitive damages to be determined by a jury;

C. Reasonable attorneys fees and costs pursuant to 42 U.S.C. § 1988; and,

D. Such other and further relief as appears reasonable and just.

JURY TRIAL

Plaintiff, Christian Garcia, hereby demands trial by jury.

Respectfully submitted,
Christian Garcia
By Counsel

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